

Senate Bill No. 287

CHAPTER 268

An act to add Section 834c to the Penal Code, relating to law enforcement.

[Approved by Governor August 30, 1999. Filed with
Secretary of State August 30, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 287, Baca. Law enforcement officers: arrest of foreign nationals.

Existing law requires every law enforcement agency in California to fully cooperate with the United States Immigration and Naturalization Service regarding any person who is arrested if he or she is suspected of being present in the United States in violation of federal immigration laws.

This bill would require California law enforcement agencies to ensure that policy or procedure and training manuals incorporate language based on the provisions of the 1963 Vienna Convention on Consular Relations Treaty. The bill also would require every peace officer, upon the arrest and booking or detaining of a foreign national for more than 2 hours, to advise the foreign national that he or she has a right to communicate with an official from the consulate of his or her country, except as specified. The bill additionally would require the peace officer or a pertinent official of his or her agency or department to follow prescribed procedures in notifying and accommodating the consular officers at the consulate of the arrestee. Because this bill would implement a federal act, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 834c is added to the Penal Code, to read:

834c. (a) (1) In accordance with federal law and the provisions of this section, every peace officer, upon arrest and booking or detention for more than two hours of a known or suspected foreign national, shall advise the foreign national that he or she has a right to communicate with an official from the consulate of his or her country,

except as provided in subdivision (d). If the foreign national chooses to exercise that right, the peace officer shall notify the pertinent official in his or her agency or department of the arrest or detention and that the foreign national wants his or her consulate notified.

(2) The law enforcement official who receives the notification request pursuant to paragraph (1) shall be guided by his or her agency's procedures in conjunction with the Department of State Guidelines Regarding Foreign Nationals Arrested or Detained in the United States, and make the appropriate notifications to the consular officers at the consulate of the arrestee.

(3) The law enforcement official in charge of the custodial facility where an arrestee subject to this subdivision is located shall ensure that the arrestee is allowed to communicate with, correspond with, and be visited by, a consular officer of his or her country.

(b) The 1963 Vienna Convention on Consular Relations Treaty was signed by 140 nations, including the United States, which ratified the agreement in 1969. This treaty guarantees that individuals arrested or detained in a foreign country must be told by police "without delay" that they have a right to speak to an official from their country's consulate and if an individual chooses to exercise that right a law enforcement official is required to notify the consulate.

(c) California law enforcement agencies shall ensure that policy or procedure and training manuals incorporate language based upon provisions of the treaty that set forth requirements for handling the arrest and booking or detention for more than two hours of a foreign national pursuant to this section prior to December 31, 2000.

(d) Countries requiring mandatory notification under Article 36 of the Vienna Convention shall be notified as set forth in this section without regard to an arrested or detained foreign national's request to the contrary. Those countries, as identified by the United States Department of State on July 1, 1999, are as follows:

- (1) Antigua and Barbuda.
- (2) Armenia.
- (3) Azerbaijan.
- (4) The Bahamas.
- (5) Barbados.
- (6) Belarus.
- (7) Belize.
- (8) Brunei.
- (9) Bulgaria.
- (10) China.
- (11) Costa Rica.
- (12) Cyprus.
- (13) Czech Republic.
- (14) Dominica.
- (15) Fiji.
- (16) The Gambia.



- (17) Georgia.
- (18) Ghana.
- (19) Grenada.
- (20) Guyana.
- (21) Hong Kong.
- (22) Hungary.
- (23) Jamaica.
- (24) Kazakhstan.
- (25) Kiribati.
- (26) Kuwait.
- (27) Kyrgyzstan.
- (28) Malaysia.
- (29) Malta.
- (30) Mauritius.
- (31) Moldova.
- (32) Mongolia.
- (33) Nigeria.
- (34) Philippines.
- (35) Poland (nonpermanent residents only).
- (36) Romania.
- (37) Russia.
- (38) Saint Kitts and Nevis.
- (39) Saint Lucia.
- (40) Saint Vincent and the Grenadines.
- (41) Seychelles.
- (42) Sierra Leone.
- (43) Singapore.
- (44) Slovakia.
- (45) Tajikistan.
- (46) Tanzania.
- (47) Tonga.
- (48) Trinidad and Tobago.
- (49) Turkmenistan.
- (50) Tuvalu.
- (51) Ukraine.
- (52) United Kingdom.
- (53) U.S.S.R.
- (54) Uzbekistan.
- (55) Zambia.
- (56) Zimbabwe.

However, any countries requiring notification that the above list does not identify because the notification requirement became effective after July 1, 1999, shall also be required to be notified.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs



mandated by the federal government, within the meaning of Section 17556 of the Government Code.

O

